IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.551 OF 2005
IN
SUIT NO.3121 OF 2004

Gopal L.Raheja and another).. Plaintiffs

Versus

Vijay B. Raheja and others).. Defendants

Mr.P.K.Samdani with Mr.P.K.Shroff, Ms.R.Ansara and Hital Savla i/b.P.K.Shroff & Co. for the Plaintiffs.

Mr.Birendra Saraf with Mr.Bhushan Shah i/b.J.Sagar & Associates for Defendant Nos.1 to 4.

Mr.Virag Tulzapurkar with Mr.M.Ali i/b.Law Charter & Co. for Defendant Nos.5 to 7.

Mr.Rishab Shah i/b.Raval Shah for Defendant No.8.

Mr.M.S.Doctor i/b.S.R.Rawal for Defendant No.9.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 23RD NOVEMBER 2005

P.C.:

. This Chamber Summons has been taken out for discovery and inspection of certain documents. These documents, according to the Plaintiffs, have been referred to by the Defendants in the affidavits filed by them in reply to Notice of Motion No.3185 of 2004 taken out by the Plaintiffs. This Notice of Motion has already been disposed off and an Appeal has been preferred against the same. The Appeal is pending before the Division Bench of this Court.

2. In the meantime, the Plaintiffs have moved the

present Chamber Summons seeking discovery and inspection of certain documents. These documents relate to those which have been referred to in the affidavits filed by the Defendants in the Motion, those documents which the Plaintiffs are under the impression are in possession of the Defendants and those documents which, according to the Plaintiffs, are relevant and required for the disposal of the Suit.

3. The common contention raised on behalf of the Defendants is that the Chamber Summons filed by the Plaintiffs is premature as Written Statements have not been filed by any of the Defendants. It is submitted on behalf of the Defendants that the stage of giving discovery and inspection of documents is after filing of the Written Statement and, therefore, the Chamber Summons should be dismissed as premature. They also submit that the Defendants have given inspection of some of the documents which have been referred to in the affidavits filed in the Motion and, therefore, there is no need to give inspection of these documents once more. Apart from this, the Defendants contend that the documents are not relevant at this stage since the Motion was heard and disposed of without inspection of these documents and the Plaintiffs did not then find it necessary to seek inspection before the hearing of the Motion. It is, therefore, submitted on behalf of the Defendants that the Chamber Summons be dismissed.

4. Mr.Samdani relies on the judgment of the Supreme Court in the case of *Shri M.L.Sethi* vs. *Shri R.P.Kapur*, **AIR 1972 SC 2379**, to submit that a party seeking discovery and inspection of documents gets knowledge of specific documents only when the other side files its affidavit. He submits that in view of this judgment, discovery and inspection of the documents referred to in the Schedule ought to be directed at this stage itself or in the alternative the Chamber Summons should be adjourned till the Written Statements are filed by the Defendants and thereafter the Court would decide the relevancy of the documents and pass orders on the Chamber Summons.

5. Order XI Rule 12 provides for making an application for discovery of documents. The Court can either refuse or adjourn the application if it is found that the discovery is not necessary or not necessary at that stage. Order XI Rule 14 empowers the Court to direct production of documents in possession of a party. Order XI Rule 15 stipulates that a party can insist by giving a notice on inspection of documents which are in possession of the opponent even before the settlement of issues. Order XI Rule 18 provides that, when inspection is not given under Rule 15, the Court may direct inspection if in the opinion of the Court it is

necessary. Order XI Rule 20 relates to premature discovery.

6. Having heard the learned Counsel for the parties, I am of the view that there is no need to grant the Chamber Summons at this stage. The Notice of Motion has already been disposed off on the basis of the inspection of the documents given at that stage. The Appeal which is pending in the Court is a continuation of the Motion itself and, therefore, it would be heard on the basis of documents produced when the Motion was heard.

7. Furthermore, the Written Statements are yet to be filed by the parties. It may so happen that the Defendants may rely on some documents which are mentioned in the Schedule while filing the Written Statement at which stage the Plaintiffs can always ask for discovery and inspection of the documents. In the event the documents which are referred in the Schedule to the Chamber Summons are not referred in the Written Statement, the Plaintiffs can satisfy the Court at that stage as to whether discovery and inspection of those documents ought to be given.

8. In my view, therefore, there is no need to keep the present Chamber Summons pending and it is, therefore, dismissed with liberty to the Plaintiffs to take out a fresh Chamber Summons after the Written Statements are

filed by the parties.